

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

APRIL WILSON, PARENT AND	}	
GUARDIAN OF MATTHEW WILSON,	}	
A MINOR	}	PLAINTIFF
	}	
v.	}	CV:2: 07 CV 00140 JLH
	}	
RC2 CORPORATION	}	DEFENDANT

MOTION TO REMAND REMOVED ACTION

April Wilson, parent and guardian of Matthew Wilson, a minor, moves this Court for an order remanding this action to state court on the grounds that:

1. On November 8, 2007, the Defendant removed this action to federal court from the Circuit Court of Lee County Arkansas.
2. In the Notice of Removal filed with this Court on November 8, 2007, the Defendant contended that this court would have had original jurisdiction of this class action had it been filed in federal court originally. This assertion relied on the "amount in controversy" provision established for class actions by Section 1332(d) of Title 28.
3. The Defendant argues that the amount in controversy exceeds the jurisdictional amount of \$5,000,000.00 because it is possible to exceed that threshold amount if attorney's fees, punitive damages, and "all other relief" are added to the prayed for amount of \$4,750,000.00.
4. This class action does not meet the requirements for "minimal" diversity of citizenship subject matter jurisdiction because:

a. The total amount in controversy, after aggregating the claims of all potential class members, as is required by 28 U.S.C. § 1332(d)(6), is less than \$5,000,000.

b. The Plaintiff has clarified the ambiguous amount in controversy by stipulating in the attached Supporting Affidavit that she is seeking less than the jurisdictional amount of \$5,000,000.

c. This court may not exercise subject matter jurisdiction over this class action based on minimal diversity of citizenship except when the matter in controversy exceeds the sum of \$ 5,000,000, exclusive of interest and costs.

4. This motion is based on this document, the Certificate of Service, the Supporting Affidavit of April Wilson, parent and guardian of Matthew Wilson, a minor, the Supporting Memorandum of Law, all of the papers and records on file in this action, and on whatever argument and evidence the parties may offer at the hearing of this motion.

WHEREFORE, the Plaintiff prays that this court decline jurisdiction and remand this action to the Circuit Court of Lee County Arkansas.

Dated: November 27, 2007

RESPECTFULLY SUBMITTED,

Russell D Carter III, P.A.
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501.605.1346

By: /s/ Russell D. Carter III
Russell D Carter III
2006039

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically on the 27th day of November, 2007, and notice of the filing will be sent to the following interested parties by operation of the Court's electronic filing system:

Claire Shows Hancock
chancock@wlj.com

Attorney for RC2 Corporation

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